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Supreme Court of the United States

OCTOBER TERM, 1940

No. 588 17

FRED F. EDWARDS,
Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPELLANT'S BRIEF

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Dated, New York, February 17, 1941.

452 Appeal Printing Co., Inc., 130 Cedar St., New York

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Supreme Court of the United States

OCTOBER TERM, 1940

No. 588

FRED F. EDWARDS,
Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPELLANT'S BRIEF

I

Opinion Below

The opinion of the Superior Court of Yuba County, California, appears at pages 10-11 of the record; it is not officially reported.

II

Jurisdiction

Jurisdiction of this Court is invoked under Section 237(a) of the Judicial Code, as amended (U.S.C. Title 28, Section 344(a)). The judgment of the Superior Court of Yuba County is of the highest court in California in which, under the laws of that State, judgment could be had in this case.

III

Statement of the Case

The facts were stipulated (R. 9) on the appeal below as follows:

> "The Appellant, Fred F. Edwards, a citizen of the United States and a resident of the State of California, left Marysville, California, on December 21, 1939, for Spur, Texas. The object of this trip was to bring his wife's brother, Frank Duncan, a citizen of the United States and resident of (1) Texas, back to Marysville. Appellant arrived at Spur, Texas, on December 24, 1939, and learned that Duncan then had no job and had last been employed by the WPA. Appellant at that time learned that Duncan was an indigent person and at all times mentioned herein, appellant knew Duncan to be indigent. It was agreed between Duncan and appellant that appellant would drive Duncan from Spur, Texas, to Marysville, California, in appellant's car. Appellant and Duncan left Spur, Texas, on January 1, 1940, entered California from Yuma, Arizona, on January 3, 1940, and arrived in Marysville on January 5, 1940. At the time Duncan arrived in Marysville he was without funds and lived at appellant's home until he was given assistance by the Farm Security Administration about ten days after his arrival in Marysville. Duncan had no employment after his arrival in California, until after he was given assistance by the Farm Security Administration. Duncan had about twenty dollars ($20.00) when he left Spur, Texas; this money was all spent before his arrival at Marysville."

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(1) The words "resident of" were omitted through typographical error from the statement of facts on page 5 in the Statement as to Jurisdiction.

Edwards was found guilty (R. 7) of violating Section 2615 of the Welfare and Institutions Code of California which holds:

> "Wilful Act a Misdemeanor. Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." (R. 12)

A sentence of six months was suspended (R. 7). On appeal the Superior Court affirmed the conviction (R. 11).

IV

Specification of Errors

The appellant assigns the following errors in the record and proceedings below:

1. The statute under which appellant was convicted (Cal. Welfare and Institutions Code, Section 2615) is repugnant to the Commerce Clause (Section 8 of Article I) of the Constitution of the United States.

2. Section 2615 of California's Welfare and Institutions Code is void on its face, is in violation of Section 1 of the Fourteenth Amendment and operates to deprive appellant of liberty without due process of law and to deny him the equal protection of the laws.

POINT I

The California statute violates the Commerce Clause of the United States Constitution.

The interstate movement of people in the United States is no latter-day phenomenon. It is a characteristic of our population as old as the nation itself. It is the basic factor which has given the United States the physical size it now possesses. It has been the dominant factor in the development of a broad national culture resulting from the blending and intermixture of diverse regional and state cultures. It underlies our development as a nation rather than as a group of separate parochial provinces.

The American people still possess—as they always have—a quality of extraordinary geographic mobility.(2) The twentieth century in this country has witnessed simultaneous and parallelling west-east and east-west migrations and a less sharp but definite movement between the north and south.(3) This characteristic American mobility has increased steadily since 1890,(4) so that by now the resident of almost any state in the Union is little more a state-man than was Defoe's "True-born Englishman" an Englishman. By 1930 every state except California had lost by migration more than 15% of the population born within it and every state, with five exceptions,(5) had more than 100,000 residents of other state

(2) Blankenship, Charles F. and Safier, Fred, *A Study of Medical Problems Associated with Transients*, 18, U. S. Public Health Service, Public Health Bulletin No. 258; Webb, John N. and Brown, Malcolm, *Migrant Families*, 126, WPA Division of Social Research, Monograph XVIII, 1938.

(3) Blankenship and Safier, *op. cit.*, 18.

(4) National Resources Committee (1938), *The Problems of a Changing Population*, 112.

(5) Maine, Vermont, Delaware, Utah, and Nevada.

origin. Twenty-three per cent of this country's native population—twenty-five million, of whom twenty-two million were native whites—were then living outside the states in which they were born.[6]

Internal migration in the United States has been well epitomized as "a process of social osmosis".[7] Just as the impelling force in the osmotic process is the factor of pressure, so, too, the fundamental driving force in the migration process is the pressure of differences—or at least the apparent differences—in the economic opportunity of diverse sections of the nation. For it is undeniable that the underlying bases of internal migration are predominantly economic.[8]

The economic emphasis may shift from one of "pull" to one of "push" from period to period—as witness the contrast between the 'twenties and the 'thirties—but the fundamental economic motive remains. During the 'twenties people migrated, not necessarily because of an impelling need to better themselves but because they were attracted by places of greater economic opportunity, the pull of greener pastures. By contrast, the basic force in the movement of the 'thirties was the necessity to find employment—the push from areas more severely stricken than others by the strains imposed on the national economy.[9] The droughts, mechanized farm cultivation, the

(6) National Resources Committee, *op. cit.*, 85; Ryan, Philip E., *Migration and Social Welfare* (Russell Sage Foundation, 1940), 24.

(7) Thompson, Warren S., *Research Memorandum on Internal Migration in the Depression*, 7, Social Science Research Council.

(8) Ryan, *op. cit.*, 12; Webb and Brown, *op. cit.*, 4, 5; A study of 4,247 migrant families indicates that 69% migrated because of varying types of economic distress at home, 25% because of personal distress—and in this 25% were 11% who migrated because of ill health.

(9) Webb and Brown, *op. cit.*, 4, 5; Webb, John N., *The Transient Unemployed*, 58-59, WPA Division of Social Research, Monograph III, 1935.

cumulative effects of low cotton prices in the post-war period and in 1932 were all strong factors in the population movement of the 'thirties to California and the west.[10] Coupled with these were: general unemployment; regional differences in employment, wage levels and patterns of seasonal labor requirements; mechanization of agriculture as well as industry; soil erosion; and similar causes.[11] In addition the pressure resulting from the circumstance that the highest birth rates occurred in the regions where economic opportunity was lowest,[12] together with the damming up of the normal flow of population in the earlier period of the depression because of the fear of the risk involved in making any move ultimately caused wide population movements.[13] Due to the depression and now as a consequence of the increased development of industry because of the defense program the movement of the impoverished is greater than ever before.[14]

There is, of course, nothing inherently undesirable about migration. The history of our nation bears witness to that. On the contrary, serious damage would result

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(10) Webb, John N., *The Transient Unemployed*, 58; Webb and Brown, *op. cit.*, c. 1; *Migratory Labor: A Social Problem*, Fortune, No. 4, p. 94; Taylor, Paul S. and Rowell, Edward J., *Refugee Labor Migration to California, 1937*, Monthly Labor Review of the Bureau of Labor Statistics, U. S. Dept. of Labor, August 1938 issue.

(11) *Preliminary Report of the Select Committee to Investigate the Interstate Migration of Destitute Citizens*, House of Representatives, 76th Cong., 3rd Sess., p. 27. (Hereafter cited as "Select Committee, Preliminary Report.")

(12) House of Representatives, *Interstate Migration: Hearings Before the Select Committee to Investigate the Interstate Migration of Destitute Citizens*, 76th Cong., 3rd Sess., Part I, New York City Hearings (hereafter cited as "Select Committee, Hearings, Part I"). Testimony of Dr. Frank Lorimer, p. 25.

(13) *Ibid.*, 29.

(14) Select Committee, Preliminary Report, *op. cit.*, 19.

and the entire economic structure of the country would be adversely affected to a marked degree if the flexibility resulting from the mobility of labor were destroyed or seriously impaired.[15]

It is necessary to evaluate California's statute in the light of the effect of that statute and similar statutes on the national economy in order to come to a valid conclusion as to whether the inter-state commerce involved in the movement of persons is a matter which a state may validly regulate as has California. For if California may legislate in this fashion, the same power must be lodged in each of the other forty-seven states. For the purpose of such evaluation, it is well to examine the general categories into which may be grouped those who participate in interstate movements of population.

In the main, present day migrants fall generally into two classes: the migratory-casual workers who furnish the mobile labor supply necessary in the national economy and the transient unemployed.[16] There is a small class of economically self-sufficient persons who move from one part of the country to another for reasons of comfort, health, social prestige, etc., as well as a larger number of more or less economically self-sufficient persons who move regularly in interstate commerce, as "white-collar" commuters, travelling salesmen, professionals, business executives, etc. The California statute under consideration is not aimed at such persons; hence it is unnecessary to con-

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(15) Ryan, *op. cit.*, 31; for example, if there were no migration between 1930 and 1960, the natural increase in population in the South and in Utah, Idaho, and the Dakotas would be 50%. The resultant effect on the economy of those areas would be disastrous since they are definitely unable to support such an increased population. Select Committee, Hearings, Part I: *Op. cit.*, 24—Lorimer.

(16) Coyle, David Cushman, *Depression Pioneers*, 5-6, WPA Social Problems, No. 1 (1939).

sider their problems—although the unequal status of "indigents" raises the question of equal protection.

Each of the two classes of migrant has definite characteristics as well as a special niche in the national economy.

"The migratory-casual worker is a necessary adjunct to those highly seasonal or intermittent industries that cannot, or will not, support a resident labor force."[17] The wheat harvest, from central Texas to the Canadian border and west to the Pacific; the apple harvest in Oregon and Washington; the citrus fruits in the Southwest and Florida; the prunes, peaches and other soft fruits along the Pacific Coast; the berries of the Mississippi Valley and on Puget Sound; the lettuce, peas, beans, melon, spinach, onion and similar truck crops in the Southwest, in Washington and along the Eastern Seaboard; the sugar beets of Colorado, California, Montana and Michigan; the cotton of Texas, Oklahoma, Arizona and California; railroad right-of-way maintenance and construction; construction of dams, levees, roads, tunnels and power and pipe lines; the oil and gas fields; the logging industry—these are among the most important of productive processes which require a mobile labor supply, the migratory-casual worker.[18] "On the economic side, the migratory-casual worker is the result of (1) the progression of the seasons, which provides an irregular sequence of employment over a large area, and (2) the pool of unemployment, which rises and falls with business conditions, but which is never completely drained."[19]

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(17) Webb, John N., *The Migratory-Casual Worker*, 1, WPA Division of Social Research, Monograph VII; 1937. Select Committee Hearings, Part I, *op. cit.*, 216—Testimony of David C. Adie, Commissioner of Social Welfare, New York State.

(18) Webb, John N., *The Migratory Casual Worker*, 5-7.

(19) *Ibid.*, XV-XVI.

Interstate migration is a clearly defined characteristic of the migratory-casual worker[20]—with approximately equal mobility among agricultural, industrial and combination agricultural and industrial workers.[21] Set out in the Appendix are three maps showing routes of travel of one hundred typical agricultural migratory-casual workers and one hundred typical industrial laborers of the same type.[22] The interstate movement characteristic of these workers is clearly evident from these maps.

The transient unemployed—the other characteristic American migrant—make up the bulk of the approximately 3,000,000 people who move annually from farms to towns and cities and vice versa, the more than 1,000,000 farm families which move from one farm to another each year,[23] and the large number who move principally between urban centers. Over two million workers, three-quarters of whom are occasional migrants and twenty-five percent habitual migrants (the latter are principally migratory-casual laborers) cross state lines yearly to work or in the search for employment;[24] if the non-working members of the family were included in the total the number would be even greater. Even those who have been employed for substantial periods of time find it necessary to cross state lines to obtain further employment.[25] The routine, customary population mobility of sound economic periods becomes "mobility in trouble" in a period of depression.[26] Both, of course, constitute interstate commerce.

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(20) *Ibid.*, 24.
(21) *Ibid.*, 24.
(22) *Ibid.*, 28, 29, 32.
(23) Taylor, Carl C.; Wheeler, Helen W.; and Kirkpatrick, E. L., *Disadvantaged Classes in American Agriculture*, U. S. Department of Agriculture, p. 5.
(24) Kvan, *op. cit.*, 25.
(25) Select Committee Hearings, Part I, *op. cit.*, 216-217—Adie.
(26) Webb and Brown, *op. cit.*, XXI; 42-43.

The transient unemployed are largely composed of families seeking permanent settlement.[27] These people have not migrated in search of relief payments.[28] As a class, they are loath to accept relief and "the vast majority of them are anxious to avoid being supported at public or private expense."[29] In fact their dislike of accepting it is often a contributing factor in inducing migration.[30]

Illustrative of the characteristics of those migrants who enter California are the facts that of 289,299 migrants "in need of manual employment" coming into the state by motor vehicle via Border Stations between June 16, 1935 and March 1, 1938, 242,898, or over 80%, entered as members of family units.[31] They averaged over four persons per motor vehicle.[32] The great majority are of native, white stock;[33] many are descendants of the oldest families in the Eastern and Southeastern states.[34]

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(27) House of Representatives: *Hearings Before the Select Committee to Investigate the Interstate Migration of Destitute Citizens*, Vol. I of the Transcript of the Committee's San Francisco Hearings (hereafter referred to as Select Committee San Francisco Transcript): Testimony of Gov. Culbert L. Olson of California, Sept. 24, 1940, p. 75. Select Committee Hearings, Part I, *op. cit.*, 340.

(28) Webb, *The Transient Unemployed*, 63; Inadequate relief accounted for but one to three percent of depression migration among unattached persons and two to four percent among heads of family groups. Westfield, Albert, *Michigan Migrants*, WPA Division of Research (March, 1939), 2-3; Webb and Brown, *op. cit.*, 51; Coyle, *op. cit.*, 5-6.

(29) Select Committee, Preliminary Report, *op. cit.*, 9; see also Coyle, *op. cit.*, 5-6.

(30) Select Committee, Preliminary Report, *op. cit.*, 28.

(31) Taylor and Rowell, *Refugee Labor Migration to California*, 1937, *op. cit.*, Table 3, p. 6.

(32) *Ibid.*

(33) *Ibid.*, 5; Select Committee, Preliminary Report, *op. cit.*, 9; Select Committee Hearings, Part I, *op. cit.*, 340—Lett; Webb and Brown, *op. cit.*, XXVII.

(34) Select Committee, Preliminary Report, *op. cit.*, 9.

Migrants, as a class, have in the main more than the average amount of initiative,[35] are "above the average family on relief",[36] and "frequently were among the most enterprising and energetic members of their former communities."[37] Their economic heads are significantly younger than those of the general population or resident relief families.[38] Those California has received have been "ambitious and energetic",[39] anxious and able to work.[40] The occupational structure of those coming into California has corresponded closely to the occupational composition and numerical distribution of the entire population.[41] Fifty-four percent of those migrant families moving to California had close personal contacts there (relatives, friends, etc.), and almost another 20% had other definite contacts;[42] 22% selected California in the hope that their health would benefit from the climate.[43]

These, then, comprise the bulk of the people who, being non-residents of California, come into that state. The act of bringing or assisting in bringing almost any one of these people into California has been made a

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(35) Select Committee, Preliminary Report, *op. cit.*, 9.

(36) Webb and Brown, *op. cit.*, 126.

(37) Ryan, *op. cit.*, 10.

(38) Webb and Brown, *op. cit.*, 97-98.

(39) Coyle, *op. cit.*, 6.

(40) Webb and Brown, *op. cit.*, cc. V, VI; A study of 5,426 economic heads of migrant families indicates 56% employable, 33% employable with handicaps, and only 11% unemployable, of whom more than half were women with dependent children requiring their full time.

(41) Select Committee, San Francisco Transcript, Testimony of Varden Fuller, U. S. Bureau of Agricultural Economics, p. 122.

(42) Webb and Brown, *op. cit.*, 18-19.

(43) *Ibid.*, 21.

crime by that state.[44] For it is clear that practically all migratory-casual labor and transient unemployed fall within the classification of "indigent persons".

The term indigent is defined[45] as:

> 1. *Wanting; lacking; void; free; destitute*
>
> 2. *Destitute of property or means of comfortable subsistence; needy; poor; in want; necessitous. Syn.—impecunious, penniless, poverty-stricken.*

The term does not necessarily involve the receipt of public relief; that is an occasional incident but not a requisite of the status. It includes employables,[46] does not exclude the possession of some property[47] and encompasses that portion of the laboring population which is self-supporting only when employed.[48]

The migratory-casual worker "is on the margin of subsistence most of the time."[49] The yearly net earn-

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(44) It should be noted that while the law, *on its face*, is aimed only at the one who brings an indigent into the state or assists in bringing in such a person, it is actually aimed at the indigents themselves. As noted above (p. 10) most of them come in as members of family groups in cars driven by one of them. A law which makes the driver of the car a criminal under those circumstances is certainly effectively aimed at all the passengers as well.

(45) *Webster's New International Dictionary, Second Ed.* (Unabridged) 1935, G. & C. Merriam Co., Publishers. See also *Funk & Wagnall's New Standard Dictionary of the English Language (1936)*. "Indigent (1) Destitute of property or means of comfortable subsistence; needy; poor (2) lacking; wanting." See also *Black's Law Dictionary, Second Edition.*

(46) *Cal. Welfare & Institutions Code*, Sec. 2505 (Deering, 1937); R. 9.

(47) *Cal. Welfare & Institutions Code*, Sec. 2600, 2601; R. 9; *In re Hybart*, 119 N. C. 359.

(48) *Goodal* v. *Brite*, 11 Cal. App. (2d) 540, 549; *City and County of San Francisco* v. *Collins*, 216 Cal. 187, 190; *Collins* v. *Newton*, 36 Cal. App. (2d) 262, 265; *Peo.* v. *Supervisors*, 121 N. Y. 345, 350; *Lander County* v. *Humboldt County*, 21 Nev. 415, 417-18.

(49) Webb, *The Migratory-Casual Worker*, X.

ings[50] of the migratory-casual workers studied by Webb establishes clearly the "indigence" of this necessary part of the nation's labor supply. Migratory-casual agricultural workers averaged annual earnings of $110 in 1933 and $124 in 1934; industrial migratory-casual workers averaged $257 in 1933 and $272 in 1934, while workers who engaged in both agricultural and industrial employment averaged $223 in 1933 and $203 in 1934.[51]

With respect to the main body of migrants, "it is from the ranks of those at or near the relief level that the bulk of migration arises".[52] Yet this group represents only a small fraction of the great portion of the American population whose economic condition places them within the category of "indigents".

One-third of all American families and single individuals during 1935-1936 received annual incomes of less than $780;[53] the average income of this group amounted to $471 a year.[54] The next third of America's families and individuals had incomes ranging from $780 to $1450.[55] The average income of this group was $1076 and the average annual income of the foregoing two-thirds of American families and single individuals was $773.50. Since "with the masses of the population the income derived from investments is negligible",[56] by definition and cold economic fact *a goodly portion of even America's employed population* and a major portion of her migrants and unemployed are indigent.

(50) Net earnings are earnings after such deductions, or their equivalent, as are made by employers for housing, meals, transportation, etc.

(51) Webb, *The Migratory-Casual Worker*, XVII.

(52) Select Committee, Preliminary Report, *op. cit.*, 29.

(53) National Resources Committee, *Consumer Incomes in the United States—Their Distribution in 1935-36*, 89.

(54) *Ibid.*, 9.

(55) *Ibid.*, 9.

(56) Leven, Moulton and Warburton, *America's Capacity to Consume*, 26.

The existence of the statute in question and the conviction of Edwards by a state which casts a wide net for prosperous visitors[57] poses sharply the question whether those whose only crime is to be poor and needy are to be denominated "outlaws of commerce"[58] and barred by a state from interstate transportation and movement.

There can, of course, be no question that the passage of persons from state to state constitutes interstate commerce.[59] The protection of their freedom of passage is readily found in the commerce clause[60] whether they be carried by common carrier or otherwise and whether free or for hire.[61]

Whether this statute arises from a fear that economic dislocation may be aggravated by increased cost to the state for relief for some indigents[62] or from other reasons, California may not constitutionally build a Chinese wall to insulate itself now from the people of America whose successive influxes[63] have resulted in her posi-

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(57) In 1939 out-of-state tourists spent $193,000,000 in California; the state treasury receives over $10,000,000 annually in taxes from travelers and tourists. Select Committee San Francisco Transcript, *op. cit.*, testimony of Gov. Culbert L. Olson, of California, p. 87.

(58) *Hipolite Egg Co. v. U. S.*, 220 U. S. 45, 58.

(59) *Gibbons v. Ogden*, 9 Wheat. 1; *Hoke v. U. S.*, 227 U. S. 308; *Gooch v. U. S.*, 297 U. S. 124; *U. S. v. Miller*, 17 F. Supp. 65; *Covington and Cincinatti Bridge Co. v. Kentucky*, 154 U. S. 204.

(60) Justice Stone, dissenting in *Colgate v. Harvey*, 296 U. S. 404, 446.

(61) *Caminetti v. U. S.*, 242 U. S. 470; *U. S. v. Burch*, 226 Fed. 974.

(62) California has raised its residence period and three years residence is now required in order to be eligible for relief. *Welfare & Institutions Code*, Sec. 2555a (Deering, 1937). The Governor of California has testified that "Pressure groups in this state have seized upon the migrant problem as a means of lowering all relief standards." Select Committee San Francisco Transcript, *op. cit.*, testimony of Gov. Culbert L. Olson, p. 85.

(63) In the period 1920-1930 two and a quarter million people were added to California's population due principally to migration from other states. *Hearings Before a Subcommittee of the Committee*

tion.[64] The purpose of Section 2615 of California's Welfare and Institutions Code, like the purpose of any act, however framed, may be found in its natural and reasonable effect.[65] The natural and reasonable effect of this statute is to deter, impede and bar the movement of indigent persons into California and when in that state, to compel their removal at such times as it pleases the authorities. California has here attempted to set up a statutory border patrol which differs in form but not in principle from the physical border patrols previously established by that state, as well as by Florida and Colorado.[66] It is obvious that California authorities have

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on Education and Labor, U. S. Senate, 76th Cong., 3rd Sess., Part 59, California Agricultural Background, Exhibit 9366, p. 21861. Of its five and a half million people, only two million were born within the state, two and a half million were born elsewhere in the United States and a million were born abroad. National Resources Committee (1938), *The Problems of a Changing Population*, 103.

(64) As of 1929 California had the highest per capita income of farm population in the United States, the fifth highest per capita income of non-farm population, the fourth highest over-all per capita income in the country, and the fourth highest aggregate income in the nation. Leven, Moulton and Warburton, *America's Capacity to Consume*, 40-48.

(65) *Henderson* v. *Mayor*, 92 U. S. 259, 268; *Bailey* v. *Alabama*, 219 U. S. 219, 244; *Truax* v. *Raich*, 239 U. S. 33, 40.

(66) National Resources Committee, *The Problems of a Changing Population*, 88; McWilliams, Carey, *Factories in the Field*, 310-311; *New York Times*: Feb. 5, 1936, p. 2, col. 5; Feb. 8, 1936, p. 18, col. 3; Feb. 9, 1936, Sec. 4, p. 11, col. 6; Apr. 19, 1936, Sec. 2, p. 2, col. 6; Oct. 25, 1936, Sec. 4, p. 10, col. 8.

The Statute is a convenient method of forcing the return of an entire group of migrants by arresting and sentencing the driver of the automobile and then suspending sentence on condition that all leave the state.

New York Times: Nov. 5, 1939, p. 1, col. 3: "In the first court action to rid Kings County of indigents from the midwest a penniless family of eight was ordered to return to Missouri.

William George, cotton picker of Corcoran, Calif., chose to return to Arbyrd, Mo., with his widowed aunt and her six children rather than serve a six months' jail sentence.

California law makes it a misdemeanor to bring indigents into the State."

at hand "an instrument of compulsion peculiarly effective as against the poor and the ignorant, its most likely victims."[67] Speaking of a similar power Freund says "Such a power (the power to remove persons likely to become chargeable), in addition to being liable to the grossest abuse, is so inconsistent with the freedom of migration in pursuit of livelihood, that it can probably not be maintained under our constitutional limitations."[68]

A natural tendency of this statute is to intimidate, under threat of criminal prosecution, not only one who would or might otherwise transport an indigent migrant, but also the migrants themselves.[69] Its consequence is thus frequently to leave the latter substantially helpless to move with the effect of compelling them to remain at their place of origin where employment for them is wanting and opportunity lacking. If the movement of indigent migrants *into* a state may be barred or impeded because of fear of the creation of a potential burden which may subsequently fall on the residents of that state, or for any such reason, why then may not migration *out of* a state be restrained where the depopulation thus occasioned would increase the burden of governmental indebtedness to those remaining or might have similar results.[70] Certainly there is no valid distinction whatever between the two types of action. If the principle of freezing of population in areas of origin is constitutionally sound, there is legal sanction for the growth of an economic condition of virtual peonage, chaining people to that part of the land where accident of birth has first placed them.

In its practical operation this statute—by impeding the free movement of employables across state lines—

(67) *Bailey* v. *Alabama*, 219 U. S. 219, 245.
(68) Freund, Ernst, *The Police Power* (1904), 258.
(69) See Footnote 44, p. 12.
(70) Freund, *op. cit.*, 530.

interposes a barrier against the competition of the labor of non-residents with that of residents. This Court has but recently held: "The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language."(71) Certainly the absence of capital cannot legitimately serve to fetter the indigent merchant of his own labor or deny him a regional or national market for his services.(72)

Poverty is not a "moral pestilence".(73) These migrants are not improper subjects of commerce;(74) these upon whom California seeks to place a statutory quarantine of "untouchable" are not contagiously diseased. Their only illness is an economic one. If this law were valid why could not California constitutionally require one who entered the state to have $100, $1,000 or $10,000—or a minimum income? Why could not a carrier be required to assure itself of the financial solvency of its passengers before transporting them to the state or remove them from the state in the event of their impoverishment subsequently.(75)

"Migration is not only a constitutional right of every American citizen; it is an economic necessity in the American economic system. This country is an economic unit with a predominantly national market. Industries, investments, goods, and labor respond to this economic and

(71) *Best and Co., Inc.* v. *Maxwell*, 85 L. ed. Adv. Ops. 1940-1941, 274, 275.

(72) *Baldwin* v. *Seelig*, 294 U. S. 511, 527.

(73) *Mayor of New York* v. *Miln*, 11 Pet. 102, 142.

(74) *Asbell* v. *Kansas*, 209 U. S. 251; *Baldwin* v. *Seelig*, *supra*, 525.

(75) *City of Bangor* v. *Smith*, 83 Me. 422.

legal fact by crossing State lines at will."[76] Migration is essential to relieve potentially disastrous population pressures.[77] Extensive migration is necessary to alleviate effectively the chronic depression of the farming population of the Southeast.[78] A mobile labor supply is a requirement of industries throughout state after state which cannot support a resident labor force.[79] The national defense program requires[80] fluidity of movement of workers from state to state; some migration to California has already been absorbed by national defense[81] but the program will require more.[82] The entire subject of migration and its problems is national in scope.[83]

Interstate trade, the redistribution of population from marginal and sub-marginal areas, the right to migrate in pursuit of livelihood, freedom of opportunity, freedom of passage from state to state, the needs of national industry, the requirements of national defense—these are

(76) Select Committee Preliminary Report, *op. cit.*, 18; Chairman John H. Tolan, quoting with approval Dr. Rupert Vance. See also: Ryan, *op. cit.*, 26.

(77) Select Committee Hearings, Part I, *op. cit.*, 24—Lorimer.

(78) National Resources Committee, *The Problems of a Changing Population*, 113.

(79) Webb, John N., *The Migratory-Casual Worker*, *op. cit.*, 7.

(80) Select Committee, Preliminary Report, *op. cit.*, 11.

(81) Select Committee San Francisco Transcript, Vol. I, *op. cit.*, Testimony of Varden Fuller, Associate Agricultural Economist, U. S. Bureau of Agricultural Economics, p. 127 *et seq.*

(82) Select Committee Preliminary Report, *op. cit.*, 11.

(83) *Ibid.*, 16, 17; Select Committee Hearings, Part I, *op. cit.*, 2, 219, 380; Select Committee San Francisco Transcript, Vol. I, p. 95—Olson. Ryan, *op. cit.*, 90: "The following federal agencies, among others, have an interest in the problems growing out of population mobility: **Department of Agriculture**: Bureau of Agricultural Economics, Farm Credit Administration, Farm Security Administration, Federal Surplus Commodities Corporation, Forest Service, Soil Conservation Service; **Department of Commerce**: Bureau of the Census; **Department of Justice**: Bureau of Parole, Bureau of Prisons; **Department of Labor**: Bureau of Labor Statistics, Children's Bureau, Division of Labor Standards, Wage &

not merely local, internal affairs and matters on which the state may have some power to affect interstate commerce.[84] These are matters affected with a vital national interest; they are the very fabric of national unity. Whether by the statute in question California seeks to bar the passage of indigents directly or indirectly her action in either event invades the power of the national government over interstate commerce.

If California is to be permitted to use the economic condition of the indigent migrant and the knowledge of that condition as a standard of guilt and a lash to drive him away and to drive away aid from him and thus immobilize and set up a barrier against the non-resident indigent, every state in the Union may do likewise and America may be converted into forty-eight economic concentration camps. But geographic and economic disinheritance by any state in this nation of any person or group whose basic crime is economic kinship with millions of other Americans has not yet achieved the dignity of constitutional benediction. "Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the poor relief lists or perish altogether. To give entrance to that excuse would be to

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Hour Division, Women's Bureau; **Executive Office of the President**: Central Statistical Board, National Resources Planning Board (formerly National Resources Committee); **Federal Works Agency**: United States Housing Authority, Works Projects Administration (formerly Works Progress Admin.); **Federal Security Agency**: National Youth Administration, Office of Education, Public Health Service, Social Security Board, United States Employment Service; **Interdepartmental Committee to Coordinate Health and Welfare Activities.**

(84) *Cooley* v. *Board of Wardens*, 12 How. 299; *Baldwin* v. *Seelig*, 294 U. S. 511; *Leisy* v. *Hardin*, 135 U. S. 100.

invite a speedy end of our national solidarity. The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division."(85)

POINT II

The statute is void on its face and operates to deprive the appellant of liberty without due process of law and to deny him the equal protection of the laws.

No argument has been made or can be made by appellee that the act of the appellant in assisting Duncan presents any greater problem to the state than Duncan's act in coming into California. The statute is patently designed to accomplish by indirection that which the state has doubts as to its ability to accomplish directly.

This Court has pointed out in *De Jonge* v. *Oregon*(86) that it is beyond the power of the state to make a crime of assisting another in the exercise of his constitutional rights. Thus the problem here posed resolves itself down to whether the indigent, Duncan, could have been constitutionally barred from California, *solely because of his indigency*, without being deprived of liberty without due process.

It is apparent not only from the statute's substance but also from its setting that California seeks to prevent non-resident indigent persons from achieving a "settle-

(85) *Baldwin* v. *Seelig*, 294 U. S. 511, 523.
(86) 299 U. S. 353, 357, 362 *et seq.*

ment" there. But California's mere legislative preference for handling a possible relief situation by seeking to exclude potential relief recipients is insufficient to justify a statute which "diminishes the exercise of rights so vital to the maintenance of democratic institutions."[87]

"The framers were not unaware that under the system which they created most governmental curtailments of personal liberty would have the support of a legislative judgment that the public interest would be better served by its curtailment than by its constitutional protection."[88] While "this court has never attempted to define with precision the words 'due process of law' * * * there are certain immutable principles of justice which inhere in the very idea of free government. * * *"[89] Whatever local interest, if any, there may be in the exclusion of poor persons, it is insufficient to justify a statute, the effect of which is to exclude or hamper the entrance of those who, because of the economic insecurity common to the great mass of the population, may conceivably require public assistance at some near or distant time. California may not invoke "the convenient apologetics of the police power"[90] to support a statute which goes beyond "the verge of the law".[91]

It is rooted deep in our concept of a democratic republic that "the ultimate foundation of a free society is the binding tie of cohesive sentiment."[92] In contrast to what can be observed in the non-democratic states of

(87) *Schneider* v. *Irvington*, 308 U. S. 147, 161.
(88) Justice Stone, dissenting in *Minersville School District* v. *Gobitis*, 310 U. S. 586, 604-605.
(89) *Holden* v. *Hardy*, 169 U. S. 366, 389.
(90) *Kansas City Southern Ry. Co.* v. *Kaw Valley Drainage District*, 233 U. S. 75, 79.
(91) *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, 416.
(92) *Minersville School District* v. *Gobitis*, 310 U. S. 586, 596.

the world where such ties are imposed by fiat from above, in the United States the development of such cohesive sentiment is a process which grows and spreads horizontally among our people.

The law involved here sets up a concrete barrier against the free movement of our peoples, one of the most important means "which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization."[93] It sets up that barrier upon a completely untenable and fictitious distinction based upon possession or lack of wealth. It denies to the poor man the protection of the laws which it grants to the rich man. It is, to be sure, not the function of the judiciary to usurp the legislative power, but it is equally true that the power of the legislature is not untrammelled when it cuts across basic rights. A state may not make individual economic security the touchstone of the right to individual liberty under our Constitution.

The right to free movement has "preserved for generation after generation, what Adams calls the American dream, 'the belief in the value of the common man, and the hope of opening every avenue of opportunity to him.' "[94] But California seeks to prevent the common man from exercising the rights which may be exercised by one whose sole distinction rests in the number of dollars he possesses. This is within neither the letter nor the spirit of our Constitution.[95]

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(93) *Ibid.*, 506; cf. National Resources Committee, *Problems of a Changing Population*, *op. cit.*, 243.

(94) Ryan, *op. cit.*, 5.

(95) cf. Frankfurter, Felix, *Law and Politics*, 199.

In connection with the commerce clause we have heretofore discussed the nation's economic need for the free movement of population. The national need has its counterpart in the necessities of the individual. In the complex structure of our modern society it is indispensable to individual liberty that one have the right to seek economic opportunity wherever it may exist.

"The right to move unhindered from one place to another is as much an element of freedom as the right to stay where you are. If a man is to make the best use of his faculties, he must be free to take himself and his belongings from where he is to where he wants to be. Mobility is more and more essential to freedom in our modern industrial system, where local industrial conditions are continually changing, and where everyone must be able to follow his trade and open up new markets for his personal skill or his products."(96)

True as this was over thirty years ago, it is even more true today. Coextensive with the individual's right to free discussion "to shape the destiny of modern industrial society"(97) is his right to seek out the opportunity of fitting into a niche in that same society. His right to free expression by speech and press, free assembly and free worship are liable to become more academic than real without their implementation by the equally free economic opportunity which is possible within the framework of our system—when unimpeded by laws such as this. It is as necessary to the individual that he have the opportunity to seek freely for new employment as it is to the nation to have available a supply of mobile, shifting labor to meet the complex demands of its eco-

(96) Hobson, J. A., *The Crisis of Liberalism*, 90.

(97) *Thornhill v. Alabama*, 310 U. S. 88, 103.

nomic make-up. In truth, the two are complementary to one another.

"Today with changing technology and local depletion of mine, forest, and soil, the people must constantly be moving from old jobs to new. It is the necessary price of progress."(98) That is not only the necessary price of progress but aiso the necessary prerequisite to progress.

This Court has pointed out that the admitted authority of the state's police power "does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality the ordinary means of earning a livelihood."(99) Can it then be said that it is possible for the state to deny to persons the ordinary means of earning a livelihood by the expedient of barring them from becoming lawful inhabitants of the state merely because of their economic status? Is it consistent with the cornerstone of our democracy to deny to economically underprivileged what the state grants to the economically privileged?

The Court has declared that "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the (14th) Amendment to secure."(100) Implicit in the right to work for a living in the common occupations of the community is the right to go any place where those occupations may require one to go to in order to exercise that right. The individual's right to work is an empty one when no work exists at the place where he is and he is barred by law from going to the place where he believes it to exist.

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(98) Coyle, *op. cit.*, 7.
(99) *Truax* v. *Raich*, 239 U. S. 33, 41.
(100) *Ibid.*, 41.

Freedom of movement and of residence must be a fundamental right in a democratic state. This Court has already said: "The liberty mentioned in that amendment (the fourteenth) means * * * the right of the citizen * * * to live and work where he will",[101] Subsequently it held the "right to establish a home"[102] to be "without doubt"[103] embraced within the term liberty. In *Williams* v. *Fears*, 179 U. S. 270, 274, Chief Justice Fuller stated: "undoubtedly * * * the right to remove from one place to another according to inclination is an attribute of personal liberty * * * and * * * is a right secured by the 14th Amendment."[104] Even an alien, once admitted to the United States, has the right of "entering and abiding in any state in the Union"[105] regardless of his personal financial condition or the state of the labor market.[106] Patently, a citizen of the United States can have no lesser right.[107]

"For all the great purposes for which the Federal Government was formed we are one people, with one common country. We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States."[108] It has been reiterated that the right to pass freely from one state to another is a privilege of federal citizenship protected by the Fourteenth Amendment.[109]

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(101) *Allgeyer* v. *Louisiana*, 165 U. S. 578, 589.
(102) *Meyer* v. *Nebraska*, 262 U. S. 390, 399.
(103) *Ibid.*
(104) See also: Stimson, F. J., *The American Constitution as it Protects Private Rights*, 99.
(105) *Truax* v. *Raich*, 239 U. S. 33, 39.
(106) *Gegiow* v. *Uhl, Commissioner*, 239 U. S. 3.
(107) *Joseph* v. *Randolph*, 71 Ala. 499, 504 *et seq.*
(108) *Crandall* v. *Nevada*, 6 Wall. 35, 48-9.
(109) *Slaughter House Cases*, 16 Wall. 36, 80; *Twining* v. *New Jersey*, 211 U. S. 78, 97; *Hague* v. *C.I.O.*, 101 F. (2d) 774, 780.

Whether freedom of movement and residence be within the aegis of the "privileges or immunities" clause of the Fourteenth Amendment or be embraced within the term liberty in the "due process clause" of that Amendment, it is a right essential to a united nation. The liberty of the individual to move and live within the geographic limits of his government which, in the truest sense, he constitutes is a basic constitutional right. This right is the more necessary and precious to those who must migrate because of economic compulsions. The dispossessed and economically disinherited must have the legally guaranteed minimal right of freedom of movement:—the same right to seek the improvement of their fortunes, to seek health, to change their social environment, as those more fortunately situated. The concept of liberty in any just, ordered democratic society must include those rights. No democracy can afford, without denying itself, to permit the legal status of the individual's 'liberty' to fluctuate with his economic condition.

The artificial basis which California attempts to set up as the sole test of whether the appellant may assist another into the state—the latter's financial status—violates every concept of fundamental constitutional liberties. It serves to deprive appellant of his liberty without due process of law as well as to deny to him the equal protection of the laws.

The protection of this form of government may not be minified by reasons of temporary economic expediency. "Those who would enjoy the blessings of liberty must, like men, undergo the fatigues of supporting it."(110) The Fourteenth Amendment is no fair weather protection of the liberties of persons. Its operation is not limited to

(110) Paine, Thomas, *Complete Works*, Vol. 2, 135.

times of economic security when there is no pressure upon states to curtail liberty. It furnishes a "guaranty against any encroachment by the states upon the fundamental rights which belong to every citizen as a member of society."[111]

CONCLUSION

The judgment appealed from should be reversed and the complaint dismissed.

Respectfully submitted,

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(111) *U. S. v. Cruikshank*, 92 U. S. 542, 554.

APPENDIX

(See Maps Opposite)

P. I — ROUTES OF TRAVEL DURING EMPLOYMENT

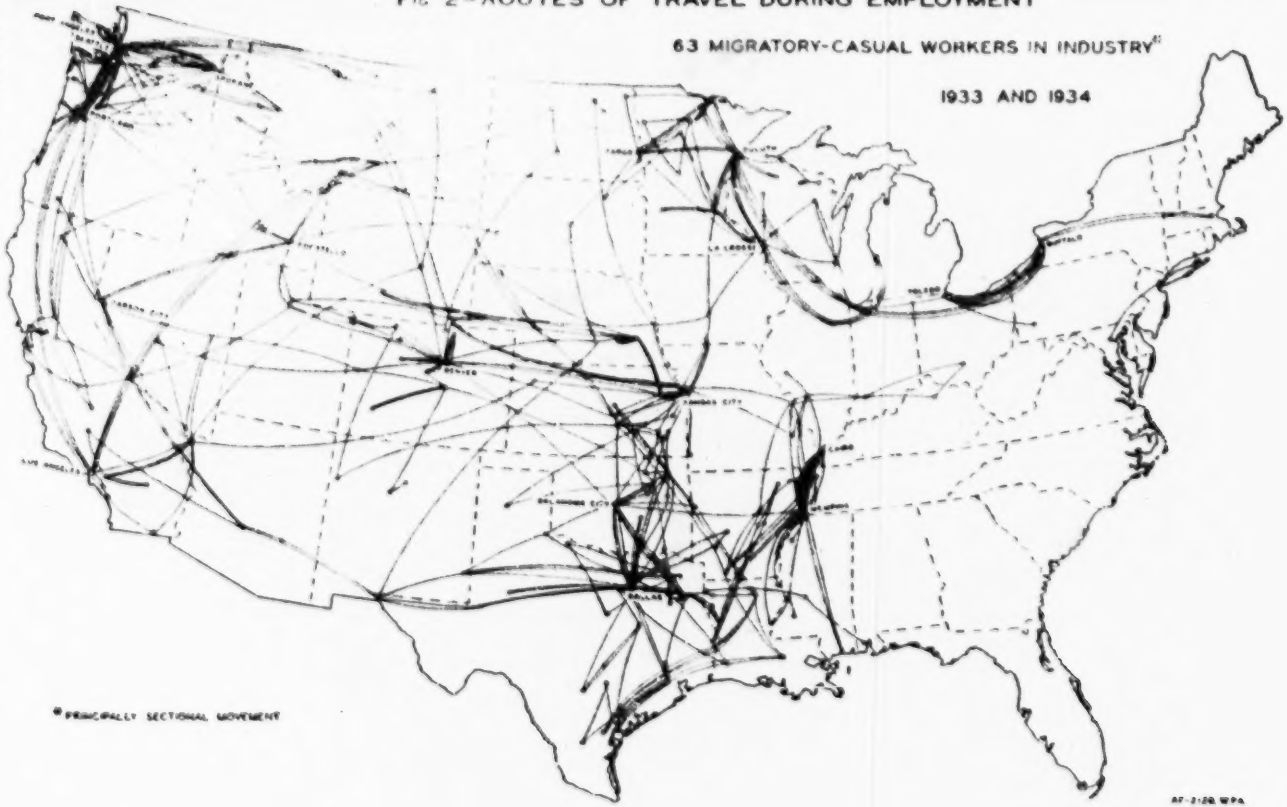
100 MIGRATORY-CASUAL WORKERS IN AGRICULTURE

1933 AND 1934

FIG. 2-ROUTES OF TRAVEL DURING EMPLOYMENT

63 MIGRATORY-CASUAL WORKERS IN INDUSTRY*

1933 AND 1934



* PRINCIPALLY SECTIONAL MOVEMENT

FIG. 3 – ROUTES OF TRAVEL DURING EMPLOYMENT

37 MIGRATORY-CASUAL WORKERS IN INDUSTRY

1933 AND 1934